IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1026 OF 2004

Smt. Janabai Jotiba Bolake and Ors ..Appellants
Versus
Piraji Ramba Bolake and Anr. ..Respondents

Mr.G.N.Salunkhe for appellants
Mr.A.S.Kapse for respondents 1 and 2

CORAM : P.V.KAKADE,J.

DATE : 9th DECEMBER,2004

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Kolhapur dismissing the appeal and confirming the judgment order passed by Civil Judge, Senior Division, Gadhinglaj decreeing the suit for perpetual injunction filed by the respondents-plaintiffs.

2. I heard the learned counsel for both the parties. Perused the record.

3. The respondents-plaintiffs have filed the suit for decree of perpetual injunction on the claim of exclusive possession of the land of 25-R out of Block No.324 situated at village Kalvikatte, Taluka Gadhinglaj, District Kolhapur. They came with the case that it is their ancestral property allotted to the share of their father during his life time. Apaiya was the owner, who died leaving two sons viz. Ranba and Jotiba. Since effecting the oral partition between Ranba and Jotiba, the property allotted to their shares have been entered in the record of rights in the name of Ranba and Jotiba. Consolidation scheme was applicable to the said village wherein the consolidation officer prepared a record since carving out the old survey numbers into block numbers, such a certificate has been issued in the year 1977 in favour of Ranba and then continued till his demise who died in the year 1994. Even the mutation entry No.642 has been also effected since recording the name of legal representatives of deceased Ranba and the same was certified on 9.10.1996. Jotiba died in the year 1982 and since his demise the property allotted to his share has been devolved upon his heirs, the defendants. the defendants in possession of the

property allotted to their share. It is further alleged that the defendant no.5 has managed to get the entry No.539 since recording the name of the defendants to the extent of 8 Anna share in the suit land and started causing obstruction. Hence the suit came to be filed.

4. The defendants contested the suit on the ground that there were no partitions and they were still in joint possession of the property with the plaintiffs and hence the suit for injunction was not called for and hence was liable to be dismissed.

5. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had proved that they were in exclusive owners and possession of the suit land and as such, since the objection was proved that they were entitled to perpetual injunction against the defendants and suit came to be decreed. Appeal carried to the District Court. The learned District Judge Gadhinglaj heard the appeal on merits and came to the conclusion that the judgment and decree passed by the lower court deserve to be endorsed to and dismissed the appeal. Hence the present appeal.

6. At the outset it may be noted that there is absolutely no substantial question of law involved in the present appeal, as the issues involved are related to the facts, which are seen to have been appreciated in proper and legal manner by both the courts below and therefore, this court would not be justified in interfering by way of this appeal.

7. The learned counsel for the appellant submitted that both the courts below have overlooked the substantial questions of law that when the suit is for perpetual injunction based on title and the properties are admittedly joint family properties, the burden is on the member who claiming the property received in partition to prove that there was partition. According to the appellants, there was no evidence for partition and the findings recorded by both the courts below was purely on surmises only.

. It is true that there is no partition deed executed between the parties, however, the evidence on record is sufficient to show on the basis of holdings of respective parties, subsequent consolidation proceedings

and holdings of land thereafter and consequent mutation entries effected after consolidation scheme was over, that there were oral partitions between the parties effected as submitted by the plaintiffs and actual possessions were held as per the said arrangements since long. Perusal of the evidence also shows that there were partitions effected between Ranba and Jotiba during their life time and consolidation record was prepared in the year 1977. Such consolidation record has been prepared by the authorities and necessary transfer certificates were issued under Section 24 of the said Act wherein the lands allotted to the share of Ranba had been recorded since carving out block number of the old survey numbers. Such a record still continued in the name of Ranba till institution of the suit and has not been challenged by the defendants. It is also seen from the record that the evidence shows that name of Ranba has been continuously entered into the record of rights of the lands allotted to their share vide Exh.57 to 62 on record.

8. Therefore, I have no doubt whatsoever that the concurrent findings recorded by both the courts below are based on proper appreciation of factual evidence and

no substantial question of law involved. In the result the appeal stands dismissed with no order as to costs.

. Consequently the civil application also stands dismissed with no order as to costs.